

APPEAL NO. 031757
FILED AUGUST 20, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on June 4, 2003. The hearing officer determined that the respondent (claimant) was entitled to supplemental income benefits (SIBs) for the third quarter.

The appellant (carrier) appealed, basically on sufficiency of the evidence grounds, contending that the claimant had some ability to work and that the record did not contain a narrative report which specifically explains a total inability to work. The file does not contain a response from the claimant.

DECISION

Affirmed.

Eligibility criteria for SIBs entitlement are set forth in Section 408.142(a) and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). The carrier appeals both the good faith requirement of Section 408.142(a)(4) and Rule 130.102(b)(2) and the direct result requirement of Section 408.142(a)(2) and Rule 130.102(b)(1).

The claimant had a compensable low back injury on _____, and has had three spinal surgeries. The parties stipulated that the qualifying period for the third quarter was from October 29, 2002, through January 27, 2003. Regarding the direct result criteria, the Appeals Panel has long held that the direct result requirement may be met by showing a serious injury with long-lasting effects which precludes a return to the preinjury employment. The hearing officer's determination on this point is supported by the evidence.

Rule 130.102(d)(4) provides that an injured employee has made a good faith effort to obtain employment commensurate with the employee's ability to work if the employee has been unable to perform any type of work in any capacity, has provided a narrative report from a doctor which specifically explains how the injury causes a total inability to work, and no other records show that the injured employee is able to return to work. The hearing officer found that the medical records from Dr. H and Dr. R explain how the compensable injury prevents the claimant from performing any work. In Texas Workers' Compensation Commission Appeal No. 011152, decided July 16, 2001, the Appeals Panel held that Rule 130.102(d)(4) does not contemplate the combining of reports from more than one doctor to somehow fashion a combination narrative report. Consequently we have reviewed the reports of Dr. H and Dr. R separately. The reports of Dr. R, the treating doctor, are dated shortly after the qualifying period and recite that the claimant has chronic pain syndrome and that she is unable to work because of "continued pain and lumbar radiculopathy." Dr. H is the carrier's required medical examination doctor and in a report dated December 12, 2002, believes there is a

potential for the claimant to work in a sedentary or light-duty capacity, but orders an functional capacity evaluation (FCE). The FCE was performed on March 24, 2003, and stated that the claimant "is unable to return to the work force at this time." Dr. H reviewed the FCE, references Dr. R's reports that the claimant was on medication that affected concentration and sedation issues, and retracted his December 12, 2002, opinion, concluding that the claimant "cannot return to competitive gainful employment." The hearing officer's determination on the good faith aspect is supported by the evidence and the narrative report which specifically explains the total inability to work is Dr. H's report which references both the FCE and Dr. R's reports. There is no other record in evidence that shows an ability to return to work.

We have reviewed the complained-of determinations and conclude that the hearing officer's determinations are not so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

We affirm the hearing officer's decision and order.

The true corporate name of the insurance carrier is **SENTRY INSURANCE A MUTUAL COMPANY** and the name and address of its registered agent for service of process is

**TREVA DURHAM
1000 HERITAGE CENTER CIRCLE
ROUND ROCK, TEXAS 78664.**

Thomas A. Knapp
Appeals Judge

CONCUR:

Margaret L. Turner
Appeals Judge

Edward Vilano
Appeals Judge